IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SECOND DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.12564 of 1998

Between:

D.Malleswara Rao, S/o Appalanarsaiah,
R/o Vishakapatnam.

..... PETITIONER

AND

1 Andhra Bank, Rep by its Chairman & Managing Director,
Saifabad, Hyderabad.
2 Deputy General Manager HRD), Andhra bank,
Saifabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly in the nature of writ of MANDAMUS, declaring the action of the respondents in treating the letter of the petitioner as resignation letter and not extending the benefits of the pension as per the Bank (Employee) Pension Regulations, 1985 as arbitrary, capricious and in violation of Art. 14 & 16 of the Constitution of India and consequently direct the respondents to consider his case for extension of the benefits of pension to the petitioner as per the said regulations and to pass such other and further orders to meet the ends of justice.

The Court made the following :

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.12564 of 1998

O R D E R:

This Writ Petition is filed seeking a Mandamus to declare the action of the respondents in treating the letter of the petitioner as resignation letter and not extending the benefit of pension as per the Bank (Employees) Pension Regulations,1985 (for short 'the Regulations') as arbitrary, capricious and violative of Articles 14 and 16 of the Constitution of India and consequently to direct the respondents to extend the benefits under the Pension Scheme.

It is the case of the petitioner that he joined the respondent-Bank as a Clerk in November,1946 and promoted as Grade III Officer in 1966 and further promoted to the post of Scale IV Officer in February,1986. While working as Scale IV Officer, he made an application seeking permission for voluntary retirement on medical grounds. Thereafter, he was paid retirement benefits of Rs.1,02,142.80. While so, the Government issued the Regulations, which came into force from 29-9-1995. As per the said Regulations, the employees, who are in the service of the Bank on or after 1-1-1986 and who have retired before 1-11-1993 and who exercised the option in writing within 120 days from the notified date can become member of the fund. On 3-5-1994, he submitted an application to come under the pension scheme. Again, another application was made to the Zonal Office on 4-7-1994 exercising option for

payment of pension as per the scheme contemplated under the Regulations. The Bank addressed a letter dated 2-8-1994 stating that his request for joining Bank's Pension Scheme is not acceptable, as he is not eligible for pension benefit, since his resignation was accepted by the Bank and was relieved on 30-6-1986. According to the petitioner, he never submitted any resignation letter to the Bank and he submitted an application to permit him to retire voluntarily. He never intended to resign the post. Respondents have no power or authority to treat the application for retirement as a resignation letter. Accordingly, he addressed a letter dated 27-9-1994 bringing to the notice of the respondents that he never resigned from the service of the Bank and he only submitted an application to permit him to retire voluntarily. He submitted another application dated 9-1-1995 requesting the General Manager (Personnel) of the Bank to consider supply of application form for pension and other material to enable him to apply for pension. He approached the Office of the 1st respondent number of times personally, but there was no response from the respondents. Further, he submitted a letter dated 22-1-1996 bringing all the relevant facts to the notice of the Bank and requesting to consider for grant of pension. However, he received a letter dated 2-3-1996 stating that his exit from the Bank is consequent upon his resignation and as per Clause 22, Chapter IV of Andhra Bank Employees Pension Rgulations,1995 resignation, dismissal or termination of an employee from service of the Bank shall entail forfeiture of his entire past service and consequently shall not be eligible for pensionary benefits. Hence, this Writ Petition.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. It is *inter alia* asserted that Regulation 19 of the Andhra Bank Officers Service Regulations does not contemplate voluntary retirement. The definition of 'retirement' under Regulation 2(y) of the Pension Regulations also does not contemplate inclusion of 'retired persons' between 1-1-1986 and 1-11-1993. Regulation 29 of the Regulation does not include the category of persons like the petitioner for the purpose of grant of pension. It contemplates payment of pension only for those who retired voluntarily after completion of 20 years of qualifying service on or after 1-11-1993. Therefore, the petitioner cannot be treated as a person voluntarily retired after 1-1-1986 and before 1-11-1993. In fact, Regulation 29 contemplates even for extending the pension benefits to those who have retired voluntarily only after 1-11-1993 and not before. There is no scheme of

voluntary retirement under the Service Regulations of the Bank. Therefore, the question of accepting the application of the petitioner to retire voluntarily does not arise. Assuming that the petitioner has retired voluntarily on 30-6-1986 as per Regulation 29 for entitlement of the pension, that is applicable only for the employees, who have retired on or after 1-11-1993. The petitioner cannot claim the pensionary benefits on par with the employees, who retired between 1-1-1986 and 1-11-1993 on attaining the age of superannuation and also claim the benefit of voluntary retirement available to the employees after 1-11-1993. The Writ Petition is, therefore, devoid of merits and liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the entire material made available on record.

At the outset, I am of the opinion that the respondent-Bank committed an error in not extending the benefits of voluntary retirement to the petitioner, under the Regulations. In fact, the petitioner made an application on 3-5-1994, on coming to know about the pension scheme, that his case may be considered for the purpose of granting pension, since he had retired from service on 30-6-1986 i.e. between 1-1-1986 and 1-11-1993. In fact, he made an application only for voluntary retirement and not otherwise. His application was taken into consideration for this purpose; however, it was considered as resignation from service, which the petitioner never meant to do so.

Before going into the issue proper, it may be necessary to notice that the Andhra Bank (Employees) Pension Regulations,1995 are made in exercise of the powers conferred by Cause (f) of sub-section (2) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act,1980 by the Board of Directors of the Bank after consultation with the Reserve Bank of India and with the previous sanction of the Central Government. A few Regulations, which are necessary for the purpose of disposal of this case, may be noted here:

> 2(k) "**Date of retirement**" means the last date of the month in which an employee attains the age of superannuation or the date on which he is retire by the Bank or the date on which the employee voluntarily retires or the date on which the officer is deemed to have retired.

> 2(l) "**Deemed to have retired**" means cessation from service of the Bank on appointment by Central Government as a whole-time Director or Managing Director

or Chairman in the Bank or in any other Bank specified in column 2 of the FIRST SCHEDULE of the Act or Banking Companies (Acquisition and Transfer of Undertakings)Act,1970 (5 of 1970) or in any public financial institution or State Bank of India established under State Bank of India Act,1995 (23 of 1955)

2(o) "**Family**" in relation to an employee means:

a. to (d)…….

2(t) "**Pension**" includes the basic pension and additional pension referred to in Chapter VI of these Regulations;

2(u) "**Pensioner**" means an employee eligible for pension under these Regulations.

2(x) "**Retired**" includes deemed to have retired under clause (l);

2(y) "**Retirement**" means cessation from Bank's service,--

a. on attaining the age of superannuation specified in Service Regulation or Settlements;

b. on voluntary retirement in accordance with provisions contained in Regulation 29 of these regulations;

c. on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlements;

3. **Application**

These regulations shall apply to employees who.**-**

1. (a) were in the service of the Bank on or after the 1st day of January,1986 but had retired before the 1st day of November,1993; and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

© refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (b) the entire amount of the Bank's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six per cent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the bank or till the 1st day of April,1995 whichever is earlier.

2. to (6)……

(7) were in the service of the bank during any time on or after the 1st day of January,1986 and had died while in service on or before the 31st day of October,1993 or had retired on or before the 31st day of October,1993 but died before the notified date in which case their family shall be entitled to the pension or the family pension as the case may be under these regulations, if the family of the deceased.—

……

22. Forfeiture of service,-

(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionery benefits.

29. Pension on Voluntary Retirement,-

1. On or after the 1st day of November,1993, at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority retire from service;

Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year.

Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a pubic sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement;

Provided that this sub-regulation shall not apply to an employee who is deemed to have retired in accordance with clause (1) of Regulation 2.

2. The notice of voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority;

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date

of expiry of the said period.

3. to (6)…….

30. Invalid Pension,-

1. Invalid pension may be granted to an employee who,-

   a. has rendered minimum ten years of service; and

   b. retires from the service on or after the 1st day of November,1993, on account of any bodily or mental infirmity which permanently incapacitates him for the service.

2. An employee applying for invalid pension shall submit a medical certificate of incapacity from a medical officer approved by the Bank.

3. to (5) ……."

It is also relevant to extract Regulation 19 of the Andhra Bank Officers' Service Regulations,1982.

"**19. Age of Retirement:**

1. The age of retirement of an Officer Employee shall be as determined by the Board in accordance with the guidelines issued by the Government from time to time.

Provided that the Bank may, at its discretion, on review by the Special Committee/Special Committees as provided hereinafter in Sub-Regulation (2) retire, if it is of the opinion that it is in the interest, an Officer Employee on or at any time after the completion of 55 years of age or on or at any time after the completion of 30 years of total service as an Officer Employee or otherwise, whichever is earlier.

Provided further that before retiring an Officer Employee, at least three months' notice in writing or an amount equivalent to three months' substantive salary and allowances, shall be given to such Officer Employees;

Provided further that …….

Provided also that nothing in this Regulation shall be deemed to preclude an Officer Employee from retiring either pursuant to the option exercised by him in accordance with the rules in the Bank.

Explanation:

1. An Officer Employee shall retire on the last day of the month in which he completes his age of retirement. Provided that an Officer Employee whose date of birth is on the first day of a month, shall retire from service on the afternoon of the last day of the preceding month on attaining the age of retirement.

2. ……."

Admittedly, even under the application dated 30-4-1986, produced by the learned counsel for the respondents along with the counter, the petitioner sought retirement on voluntary basis in view of his deteriorating health condition. He was relieved off duties on 30-6-1986; however, treating the said letter of voluntary retirement as a resignation, which is erroneous. Whether there was a scheme or no scheme, when a person wants to retire on his own, it is called voluntary retirement. Simply because there was no scheme, it cannot be said that the petitioner has resigned from the post. In fact, his retiral benefits as on 30-6-1986 were calculated and paid to him on the basis of the service rendered by him in the Bank. Therefore, the contention of the learned counsel for the respondents that as per Regulation 22 of Regulations, the resignation or dismissal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not be qualified for pensionary benefits cannot be countenanced. May be, the respondents have misunderstood and treated the letter dated 30-4-1986 of the petitioner as a resignation in the absence of some rule. But, the application filed by the petitioner was only seeking voluntary retirement and in fact, the respondent-Bank took into consideration the total service put up by the petitioner for the purpose of payment of retiral benefits. That means, Regulation 22 of the Regulations have no application to the case of the petitioner. The fact as to the applicability of Pension Regulations for the persons, who have retired from service in between 1-1-1986 and 1-11-1993 is not in dispute. Therefore, it has to be seen, in the light of the facts of this case, whether the petitioner has retired from service of the Bank and he is entitled for pension as per the Regulations.

The definition of 'date of retirement' under Regulation 2(k), as noted above, also includes the date on which the employee voluntarily retires or is deemed to have retired or is retired by the Bank. This means, apart from retirement on attaining the age of superannuation, a person, who has been retired by the Bank, even as a result of disciplinary proceedings by way of compulsory retirement, is entitled for pension and a person, who is deemed to have retired from service, if he had absented or absconded from duty, is also entitled for pension as per the provisions of the service rules; but not a person, who had honestly served the organization for more than 40 years and sought voluntary retirement, just at the verge of his superannuation, due to ill-health. Further, under Regulation 2(l), as noted above, even an employee, who is ceased from service of the Bank on appointment by Central Government as a whole-time Director or Managing Director or Chairman in the Bank or in any other Bank specified in the Banking Companies (Acquisition and Transfer of Undertakings) Act,1970 or in any public financial institution or State Bank of India, is also treated as 'deemed to have retired from service'.

Further, Regulation 3(7) of the Regulations contemplates eligibility of pension in respect of the persons, who were in service of the Bank during any time on or after 1-1-1986 and died while in service on or before 31-10-1993 or had retired on or before 31-10-1993 but died before the notified date in which case their family shall be entitled to pension or the family pension, as the case may be. Does this mean, a person, who retired voluntarily in view of his ill-health is not allowed pensionary benefits, whereas a person, who died, as stated above, his family is allowed family pension and in case of the petitioner even after his death, no family pension can be granted to his family members in view of the contention raised by the respondents that the application of the petitioner for voluntary retirement was treated as resignation and as such, he is not entitled for pension. Regulation 29 of the Regulations, which deals with pension on voluntary retirement, states that on or after 1-11-1993 at any time after an employee has completed 20 years of qualifying service may, by giving a notice of not less than 3 months in writing to the appointing authority, retire from service. While inviting the attention of the Court to this Regulation, learned counsel for the respondents contended that the provision of voluntary retirement is available for the purpose of pension only after introduction of the Regulations, i.e., the persons, who want to go for voluntary retirement on or after 1-11-1993 after completion of the qualifying service and not like the petitioner. This

is not the purport of Regulation 29, which does not disentitle persons, who have retired voluntarily from service of the Bank between 1-1-1986 and 1-11-1993. As noticed above, the definition of 'date of retirement' includes the date on which the employee voluntarily retires or the date on which the Officer deemed to have retired.

As discussed above, the petitioner cannot be said to have resigned from service, since his benefits, taking the entire service rendered by him into consideration, were computed and paid. Therefore, the contention of the learned counsel for the respondents that since the petitioner resigned, his past service cannot be taken into consideration for the purpose of pension under Regulation 30(1)(b) cannot be acceded to. Regulation 29 of the Regulations has no application to the case of the petitioner. The case of the petitioner has to be looked into from the definition of 'retirement', 'date of retirement' and Regulation 3(7). Further, it is interesting to notice that deemed to have retired includes cessation from the service of the Bank on appointment elsewhere and such persons are also entitled for pension.

In fact, there is no provision, which positively denies pension to the persons, who have voluntarily retired from service between 1-1-1986 and 1-11-1993. Regulation 29 of the Regulations is made available in the Regulations to say that those who want to retire voluntarily from service of the Bank, they should give a notice of not less than 3 months in writing to the appointing authority to retire from service. But, it cannot be said that the persons, who have retired from service on or before 1-11-1993 are not entitled for pension. The overall reading of the provisions would make it clear that the petitioner is deemed to have retired from service voluntarily and as such, he is entitled for pension and other benefits, subject to condition that he fulfils all the requirement as per the Regulations.

The petitioner was appointed as a Clerk in the respondent-Bank in the month of November,1946 and in view of his meritorious service, he reached the position of SMGS IV. He sought for voluntary retirement by an application dated 30-4-1986 due to his ill-health after serving the Bank for about four decades. Further, he had to attain the age of superannuation very soon of his letter dated 30-4-1986.

There may not be any provision in a particular law, but that does not mean that a person is not permitted to retire from service. He is always permitted to retire

from service voluntarily and some terminal benefits will be paid. In this case, the same thing has happened. In this regard, it is relevant to refer to P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edition), in which, the terms 'voluntary retirement' and 'resignation' are distinguished as under:

> "The 'voluntary retirement' and 'resignation' involve voluntary acts on the part of employee to leave service. One of the basic distinctions between the two is that in case of resignation, it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service……In the case of retirement, voluntary or superannuation, the relationship continues for the purposes of payment of retiral benefits."

An employee can seek voluntary retirement without any objection from the management after rendering prescribed period of qualifying service. The request for voluntary retirement can be refused only when the rules or service conditions give such option to the employer. Admittedly, in the case on hand, no such rule or service condition is brought to the notice of the Court saying that there is a provision under the Regulations of the Bank, which gives option to the employer to reject such an application. In fact, in the given circumstances of the case, whether a person has retired voluntarily or on his own or under a settlement or by the Bank prematurely, all such employees are entitled for pension, provided they have retired as such between 1-1-1986 and 1-11-1993 and completed 55 years of age or 30 years of service, whichever is earlier. In this case, the petitioner has satisfied all the criteria for being treated as retired voluntarily and entitled for pension. Further, it is also brought to the notice of this Court that cases of this nature are very few and it would not cast much financial burden on the Bank. In this regard, it is relevant to refer to the decision of the Apex Court in **BANK OF INDIA v. INDU RAJAGOPALAN & OTHERS** wherein it was held as under:

> "**(3)** All that has happened is in such of the banks where a Scheme for voluntary retirement was available, certain employees retired under that scheme. Now a comprehensive Pension Scheme has been framed which came into force w.e.f. November 1, 1993 and applicable uniformly to all Bank employees which provides for voluntary retirement as well. The applicability of these Rules to those employees who have voluntarily retired w.e.f. January 1, 1986 to October 31, 1993 is raised in these matters. It is not possible for Shri V.R. Reddy learned senior counsel who appears for the appellants to point out that there is any significant financial or other burden or difference so far as those who had voluntarily retired and those who had ordinarily retired. In that event where there is no distinction, the authorities having sought to make a distinction and not applied the regulations framed subsequent to their

> retirement, the High Court has given appropriate directions. We also notice that the number of employees who have retired in this manner is also very small. Therefore we think no interference is called for in these appeals. The appeals are, therefore, dismissed with no order as to costs."

Therefore, the petitioner is entitled for pension as per the Regulations. In fact, the petitioner, in this regard, made an application for sanction of pension in time and agreed to fulfil the conditions as laid down under the Regulations, but he was not permitted to do so.

For the aforementioned reasons, I am of the opinion that treating the petitioner as resigned from service is arbitrary and illegal. It must be deemed that the petitioner has been retired voluntarily. The application of the petitioner for payment of pension under the Regulations shall be considered, after asking the petitioner to fulfil the conditions and he shall be paid all the arrears thereagainst, within a period of three months from the date of receipt of a copy of this order.

With the above direction, the Writ Petition is disposed of. No order as to costs.

22-8-2005

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